THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NOs.19649 and 19659 of 1998

DATED: 05-04-2007

W.P.No.19649 of 1998:

Between:-

Singampally Appalaswamy and others

.. Petitioners

and

The District Collector, Visakhapatnam and another.

.. Respondents

W.P.No.19659 of 1998:

Between:-

L. Samba Murthy and others

.. Petitioners

and

The District Collector, Visakhapatnam and another.

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NOs.19649 and 19659 of 1998

COMMON ORDER:

Since the issue involved in both the writ petitions is one and the same, they are being disposed of by this Common Order.

Both the writ petitions are filed seeking a mandamus declaring the action of the respondents in acquiring the lands of the petitioners situated in various survey numbers at Narsipatnam village, in pursuance of notification under Section 4 (1) of the Land Acquisition Act (for short 'the Act'), dated 26.01.1996, and declaration under Section 6 of the Act, dated 02.11.1996, as illegal, arbitrary and unconstitutional; and consequently to direct the respondents not to acquire the lands of the petitioners.

The case of the petitioners in both the writ petitions is that they are residents of Neelampeta and Narsipatnam villages of Visakhapatnam District and they all own small extents of dry land and, by cultivating the same, they have been eking out their livelihood. While so, in pursuance of notification under Section 4 (1) of the Act, dated 26.1.1996, and declaration under Section 6 of the Act, dated 02.11.1996, the 1st respondent proposed to acquire their lands along with the lands of other persons, with a view to provide house sites to the weaker sections. The grievance of the petitioners is that they are all small farmers having small extents of land and are eking out their livelihood by cultivating the said lands, and, if the respondents acquire the same, they loose their livelihood and face much hardship. They further allege that though they have made objections on 12.06.1998, the respondents, without looking into the same, are trying to pass an award in respect of their lands, and that unless the process of

acquisition is stopped, they will be put to irreparable loss. Hence, they filed the present writ petitions.

Despite the fact that notices were served on the respondents, the respondents have not chosen to file counters in both the writ petitions.

This Court, in both the writ petitions, while issuing rule nisi, on 13.07.1998, passed an interim order directing the respondents not to dispossess the petitioners until further orders.

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

Since no counter is filed by the respondents, this Court has no option but to accept the contentions of the petitioners in the writ petitions. Further, this Court ordered only stay of dispossession and it is not known as to whether any award was passed or not, as there is no counter. According to Section 11-A of the Act, the award proceedings shall be completed within a period of two years from the date of declaration. Admittedly, declaration under Section 6 of the Act was published on 02.11.1996 and, as no counter is filed, it is to be deemed that no award is passed. Therefore, 4 (1) notification, dated 26.01.1996, and the subsequent proceedings must have been got lapsed. Hence, they are liable to be set aside and accordingly set aside.

Accordingly, the writ petitions are allowed.

However, if the respondents so choose to initiate land acquisition proceedings, they are at liberty to issue a fresh notification under Section 4 (1) of the Act and, thereafter, issue notice as provided

under Section 5 of the Act calling for objections and the petitioners may raise all tenable objections under law.

GOPALA KRISHNA TAMADA, J

5th April, 2007
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